IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.620 OF 1988

Central Bank of India .. ..Appellant

Versus

Gulabrao N. Shedage and Ors. .. ..Respondents

Shri P.S.Dani for the appellant

Shri S.G.Surana for the respondents

CORAM : P.V.KAKADE, J.

DATE : 23RD DECEMBER, 2004.

ORAL JUDGMENT:

1. This is an appeal preferred by the appellant-Bank against the Judgment and Order passed by the Addl. District Judge, Satara dated 20.11.1987 allowing the appeal of the present respondent and setting aside the order of the Joint Civil Judge, Junior Division, Wai decreeing the suit of the appellant-plaintiff bank.

2. The plaintiff bank had filed the suit against the

defendants for recovery of the crop loan advanced to the defendant no.1. The defendant nos.2 and 3 were sureties to the loan. The defendants from time to time acknowledged receipt of the balance dues last of which was 9.4.1980 and the suit was filed on 15.6.1982.

. The defendants challenged the suit on various grounds including the ground that the claim barred by law of limitation. The Lower Court adjudicated the dispute and came to the conclusion that the suit was within limitation by virtue of fresh contract between the parties contemplated under section 25(3) of the Indian Contract Act and suit came to be decreed. Appeal was carried to the District Court, Satara. The learned appellate court judge after hearing the parties did not approve the view taken by the trial judge and set aside the order of the decree passed by him and allowed the appeal and dismissed the suit on the ground that it was barred by limitation. Hence the present second appeal.

3. I heard the learned counsel for both the parties. Perused the record.

4. In this regard it must be noted that

disbursement of loan was on 19.12.1972, 20.3.1973, 4.7.1973 and 10.7.1973. The defendants had acknowledged the debt by acknowledgement dated 27.11.1975. There was fresh agreement between the parties with respect to loan amount which admittedly is the amount which was outstanding as on that date. The said agreements are on record at Exh.21/1 and 21/2. With these admitted facts the learned Appellate Court Judge has come to the conclusion that since the acknowledgment was of 1.12.1978, it cannot be considered as an acknowledgement of existing debt because it was beyond the period of three years from 27.11.1975.

5. At the time of admission of the appeal the substantial question of law was raised to the effect:

> "whether the consideration as contemplated under Section 25(3) of the Indian Contract Act would also include interest accrued on the original debt and whether agreement amounting to promise to pay the initial debt along with the accrued interest would amount to a fresh consideration between the parties resulting in limitation running from the date of such agreement?"

. Mr. Dani the learned counsel for the appellant in the course of the arguments submitted that the said document on 1.12.1978 should be construed as a contract between the parties by which the defendants have taken over the liability of paying time barred debt. It was also submitted that there is necessarily a difference between acknowledgement of existing debt and the fresh contract to pay time barred debt. The former must be within a period of limitation of three years, while there is no such period of limitation prescribed for the later.

. In this context reference must be made to the provision of Section 25(3) of the Indian Contract Act, which reads thus-

> 25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law. An agreement made without consideration is void, unless :

(1) .....

(2) .....

(3) IT is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

If any of these cases, such an agreement is contract. "

Therefore, it is clear that the contract of making payment of time barred debt is expressly provided by this provision, which deals with the contract which were void for want of consideration. Sub-Section (3) deals with contract which is exception to the same and lays down that if parties to the contract agree to pay time barred debt then such contract is valid contract, even if it has no consideration flowing per se. Thus, if fresh contract is made which contains a fresh promise to pay the amount even if it is time barred then such contract can always be enforced by the court of law.

6. On perusal of the judgment of the lower appellate court it appears that while dealing with these submission it is clear that the said agreement between the parties refers to loan application, which in fact was not there and also records that the said agreement by itself does not refer that the promise was to pay time barred debt. What has been held by the learned Appellate Court Judge is that for contract to be valid under Section 25(3) of the Contract Act, there must be a specific reference in that contract itself that the promissor is making to pay debt which promissor knows and is reflected in the agreement itself as a time barred debt. The Lower appellate court found that unless there is specific mention in the agreement itself that the debt is time barred debt, no agreement can be a valid agreement as contemplated by Section 25(3) of the act. In other words, it was held that Section 25(3) means to hold that such contract must record itself that the debt mentioned therein is a time barred debt. In my considered view, it is not correct approach because obviously the learned judge is reading something into the section which is not there.

7. Section 25(3) of the Act does not require the contract to be a legal contract to mention therein itself that the debt was a time barred debt. All that said section requires is that there has to be a promise, such promise has to be in writing and such promise has to be in relation to debt which the creditor might have enforced payment of, but law of limitation. The clause (3) does not require that writing itself must indicate or mention that the debt was a time barred debt. In this regard reference must be made to the ruling of this court in the case of **Kasturchand Jiwaji vs. Manekchand Devchand - A.I.R. (3)) 1943 Bombay 447**, which specifically deals with the contract under Section 25(3) and lays down law that any contract to be a valid contract under section 25(3) of the Act, it should be a contract in writing; must be signed by the persons to be charged with, must be a promise to pay wholly or in part the debt, of which the creditor might have enforced payment, but for the law of limitation of suit. The said judgment further lays down that the writing itself need not specifically state that the debt mentioned therein is a time barred debt. In this regard, the further reference may also be made to another ruling of Madras High Court - AIR 1951 Madras 903, in which case

also same legal position is reiterated and it is laid down that the promise to pay under Section 25(3) will be enforced, if there is consideration to be shown a time barred debt, though no reference is made in the document of such debt, no knowledge of the debtor that debt is time barred is proved before the promise is made. Similar view is also expressed by Alhabad High Court (AIR 1985 Alhabad page 12). Thus the legal position is that a contract under section 25(3) to be a valid contract, there is no necessity of mentioning in that contract itself that the same is in respect of time barred debt.

8. It appears that the learned lower appellate court judge placed reliance on the judgment of Madras High Court as reported in AIR 1975 page 333. However, perusal thereof shows that such reliance is completely misplaced inasmuch as point considered by the said judgment is not at all the point which is falling for consideration for ours. The said case deals with distinction between an acknowledgement under Section 18 of the Limitation Act and promise under Section 25(3) of the Contract Act, but does not deal with the situation as to whether the promise under Section 25(3) must by

itself record it to be a time barred debt.

. Therefore, as noted earlier, the existence of the contract between the parties dated 1.12.1978 is not in dispute. What has been held by the appellate court is that the said contract is not a valid contract under section 25(3) because it does not refer to the debt as time barred debt and in view of the findings made by both the courts below that the parties did enter into the contract on 1.12.1978, liability of the Respondent to pay the said dues is undoubtedly established.

9. In view of this position the substantial question of law is answered in the affirmative and the appeal is allowed. The Judgment and order passed by the lower appellate court judge allowing the appeal is hereby set aside. the Appellant-plaintiff bank is entitled to the suit claim with interest at the rate of 15% from the date of the suit till payment or realisation as decreed by the trial court.

. In these circumstances there shall be no order as to costs.

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